SUPREME COURT, U. S.
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MICHAEL RODAK, JR.

Supreme Court of the United States

October Term, 1973

No. 73-890

ERIE LACKAWANNA RAILWAY COMPANY, Debtor,
Petitioner,

vs.

NORFOLK AND WESTERN RAILWAY COMPANY,
Respondent.

On Petition For A Writ of Certiorari To The United States Court of Appeals For the Sixth Circuit

PETITIONER'S REPLY BRIEF

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It is with great reluctance that Petitioner (Debtor) files this Reply Brief. It feels compelled to do so by reason of Respondent's injection of new matter in its brief which has the effect of obfuscating the issues with respect to which a Writ of Certiorari is sought.

Norfolk and Western Railway Company in its Brief in Opposition to the Petition attempts to supplement the record in this case by referring to matters which took place subsequent to the decision by the Court of Appeals for the Sixth Circuit and by discussing issues as to which Petitioner does not seek a Writ of Certiorari.

I. THE CONSOLIDATED RETURN FOR 1972 FILED BY RESPONDENT AND THE ELECTION MADE THEREIN ARE NOT A PART OF THE RECORD AND ARE IN ANY EVENT IRRELEVANT.

Norfolk and Western Railway Company ("N & W") in its Brief refers to elections made by N & W in filing its 1972 consolidated return which included the income and deductions of Petitioner for the full year 1972. The content of that return is not a part of the record in this case, but even if it were the inclusion of that information begs the issue. The issue is not what elections N & W made in the 1972 return, but rather whether, as a proper matter of bankruptcy administration, elections with respect to methods of depreciation and amortization which affect the property of the Debtor are "property" of the Debtor subject to the exclusive control and jurisdiction of the District Court. Thus, the issue is not what elections were made but who has the right to make and exercise control over those elections. More specifically, that issue is as set forth in the Petition:

> "Whether the District Court in Fulfilling Its Duty to Protect the Property of the Debtor, Including Its Tax Attributes, Can Direct the Parent As to What Tax Elections Are to Be Made in a Consolidated Return Which Affect the Debtor's Property . . .".

This is a novel and important issue both in the administration of the bankruptcy laws and in the administration of the consolidated returns regulations.

II. PETITIONER DOES NOT SEEK REVIEW OF THAT PORTION OF THE COURT OF APPEALS' DECISION PERMITTING THE FILING OF A CONSOLIDATED RETURN BY N & W.

Petitioner does not seek a Writ of Certiorari with respect to the issue below as to whether or not N & W could be enjoined from filing a 1972 consolidated return which includes income and deductions of the Debtor for the period subsequent to the filing of the Petition for Reorganization under the bankruptcy laws. Petitioner ac-

cepted that aspect of the decision of the Court of Appeals. Nevertheless, Respondent seeks to confuse the situation by spending several pages in its Brief on that non-issue.

CONCLUSION

The issues as to which a Writ of Certiorari is sought are relatively narrow. They are:

1. Whether tax attributes constitute "property" for purposes of bankruptcy administration, and

2. Whether the District Court in fulfilling its duty to protect the property of the Debtor, including its tax attributes, can direct N & W, the parent, as to what tax elections are to be made in a consolidated return which affect the Debtor's property.

For the reasons set forth in the Petition, a Writ of Certiorari should issue.

Respectfully submitted,

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